

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:22-CV-81-D

FIVE POINTS HEALTHCARE
OF NC, LLC d/b/a NATIVE ANGELS
HOME HEALTH AGENCY, INC.,

Plaintiff,

v.

XAVIER BECERRA, Secretary of the
Department of Health and Human Services,
and CHIQUITA BROOKS-LASURE,
Administrator for the Centers for Medicare
and Medicaid Services,

Defendants.


ORDER

On May 23, 2022, Five Points Healthcare of NC, LLC d/b/a Native Angels Home Health Agency, Inc. ("Native Angels" or plaintiff) filed a complaint challenging two decisions by the Medicare Appeal Council concerning Medicare reimbursement applications [D.E. 1]. On August 2, 2022, the United States filed a motion to dismiss for insufficient service of process under Federal Rule of Civil Procedure 12(b)(5) [D.E. 16], and filed a memorandum in support which alleged that neither the United States Attorney nor the United States Attorney General were properly served under Rule 4 [D.E. 12]. See Fed. R. Civ. P. 12(b)(5), 4(i)(2).

Counsel for plaintiff has filed a response in opposition, demonstrating that she remedied the defects in service before August 21, 2022. See [D.E. 17, 20 and attachments]. The United States has not filed any reply, and the time within which to do so has expired. The court has considered the motion to dismiss under the governing standard. See Fed. R. Civ. P. 12(b)(5), 4(i), (m); Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999). The court DENIES the motion

[D.E. 11] as moot. The court declines to grant plaintiff's request for attorney's fees incurred in responding to the motion. See, e.g., 28 U.S.C. § 2412(b); Harvey v. Cable News Network, Inc., 48 F.4th 257, 2022 WL 4006939, at *12–16 (4th Cir. 2022); Hyatt v. Shalala, 6 F.3d 250, 254 (4th Cir. 1993).

SO ORDERED. This 29 day of September, 2022.


JAMES C. DEVER III
United States District Judge